

<b>BRG 321, LLC v Brown</b>
2015 NY Slip Op 31306(U)
March 4, 2015
Civil Court of the City of New York, New York County
Docket Number: L&T 78339/201
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R

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BRG 321, LLC

Petitioner-Landlord

**HON. SABRINA B. KRAUS**

-against-

**DECISION & ORDER**  
**Index No.: L&T 78339/2014**

MICHELLE BROWN  
321 EAST 22 STREET Apt. # 6-E  
New York, NY 10010

Respondent- Tenant

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X

**BACKGROUND**

This summary nonpayment proceeding was commenced by **BRG 321, LLC** (Petitioner) against **MICHELLE BROWN** (Respondent) the rent-stabilized tenant of record seeking to recover possession of 321 EAST 22 STREET Apt. # 6-E, New York, NY 10010 (Subject Premises) based on the allegation that Respondent has failed to pay rent due for the Subject Premises.

**PROCEDURAL HISTORY**

Petitioner issued a rent demand dated September 3, 2014, seeking \$5082.78 in arrears rent for July through September 2014 at a monthly rent of \$1854.67. The petition is dated September 17, 2014. Respondent failed to appear or file an answer, and on November 6, 2014 the court (Lebovits, J) awarded Petitioner a judgment on default. The warrant of eviction issued November 12, 2014.

On January 5, 2015, Respondent moved to vacate the default. The motion was adjourned to February 4, 2015, and the court ordered an inspection. An inspection took place on January 12, 2015, and resulted in one Class “A” violation for painting and plastering, three Class “B” violations for unclogging the bathtub, defective smoke detector, defective wood floors throughout the Subject Premises, and three Class “C” violations for an illegal lock at the building entrance, a loose hand rail on the spiral staircase, and a leaky toilet in the bathroom on the lower level.

On February 4, 2015, the court (Milin, J) granted the motion to vacate the default, and set a trial date for February 23, 2015 and scheduled access for correction of the violations on February 16 and 17 from 9am to 5 pm.

On March 4, 2015, the proceeding was assigned to Part R for trial, the trial took place, and the court reserved decision.

#### **PRIOR RELATED PROCEEDING**

There was a prior nonpayment proceeding between the parties under Index number 73483/2012. At the request of the parties’ the court takes judicial notice of the contents of said file. The petition is dated July 19, 2012 and sought \$3899.57 in arrears for May through July 2012 at a monthly rent of \$1748.37. Respondent failed to appear or answer and on October 15, 2012 the court (Freed, J) awarded Petitioner a default judgment.

On November 19, 2012, Respondent moved to vacate the default, and on January 28, 2013, the motion was granted pursuant to a stipulation that stayed execution of the warrant through January 31, 2013 for payment of \$5454.96 in arrears agreed due through January. The

stipulation provided that Petitioner reserved its claims for \$2055.83 alleged due through May 2012.

On April 18, 2013, Petitioner moved to restore the proceeding to the calendar for money judgment for amounts previously reserved, and related relief. The court (Halprin, J) granted the motion on default and entered a new judgment against Respondent for \$2,055.83. Issuance of the warrant was stayed five days for payment. Pursuant to said judgment a new warrant of eviction issued on October 22, 2013.

On May 20, 2013, Respondent moved to vacate the default. On September 9, 2013, the motion as resolved by a stipulation, which provided that execution of the warrant was stayed for payments of approximately seven thousand dollars in arrears.

On November 21, 2013, Respondent moved by order to show cause asserting a Marshal's notice has been improperly served. On the return date, the parties entered a stipulation adjourning the motion to January 23, 2014, for a hearing on disputed payments. The hearing was adjourned to April 28, 2014, when the motion was denied by the court (Spears, J) based on Respondent's failure to appear.

On May 8, 2014, Respondent again moved to vacate her default. The motion was resolved by stipulation staying execution of the warrant for payment of \$7035.02 in three parts by July 2014. The stipulation provided that upon payment in full the judgment would be satisfied and the proceeding discontinued.

On July 10, 2014, Respondent again moved by order to show cause for an order stopping the eviction and alleging she had complied with the stipulation. The motion was granted by the court (Spears, J) pursuant to an order which provided Respondent was to pay \$2749.84 for a

retroactive increase on a renewal lease which was signed in court on the date the order was issued. The order conditioned execution of the warrant on payment of said sum by July 31, 2014.

At no point in the proceeding did Respondent raise the issue fo repairs or ask for repairs.

### **FINDINGS OF FACT & CONCLUSIONS**

At the commencement of the trial the parties stipulated that rent was unpaid from August 2014 through March 2015, and that the primary contested issue for trial was the amount of an abatement if any Respondent is entitled to and repairs.

Respondent is the tenant of record of the Subject Premises pursuant to an original lease dated October 4, 1994 (Ex 1). Petitioner is the landlord of the Subject Premises pursuant to a lease renewal dated November 27, 2013, for a one year period through March 31, 2015. Although the rewal provides for a rent of \$1854.67 (Ex 2), the legal registered rent for the period of the renewal is \$1783.34 (Ex 4), therefore Petitioner is limited to said sum in this proceeding [*Myers v Frankel* 184 Misc2d 608 (*failure to file proper registration bars collection of rent above last registered rent*); NYCRR §26-517(e)].

Based on the foregoing, the total unpaid collectible rent for August 2014 through March 2015 is \$14,266.72.

There is a valid MDR on file for the subject building (Ex 3).

On August 15, 2014, Respondent put Petitioner on written notice that the floors in the Subject Premises need to be redone. A letter was mailed to Petitioner with this request on August 19, 2014 (Ex B-2). Additionally, Petitioner's super, acknowledged that the defective floors in the Subject Premises had been an issue disturbing the tenant in 5E below the Subject Premises and

that the tenant of 5E had frequently complained of this to the Super. The Super testified he could not recall if Respondent had asked for Repairs from July 2014 forward.

The reduction in services complaint filed by Respondent with DHCR in September 2014 only lists the floors as an issue.

Respondent can show no prior notice to Petitioner of a request for any of the other repairs that were the subject of the January 2015 violations. Additionally, Respondent acknowledged that all violations other than the floors were corrected by February 17, 2015.

It is also undisputed that Respondent would not allow Petitioner to correct the wooden floors on February 17, 2015, because she wished to direct the manner in which the work would proceed, and wished Petitioner to relocate her during the work.

Based on the foregoing the court finds that Respondent is entitled to a 15% abatement for the defective wood floors from September 2014 through January 2015.

The court does not find that Respondent is entitled to an abatement for any other condition based on her failure to establish that Petitioner was on notice of the other conditions (*72A Realty Associates, LP v Mercado* 46 Misc.3d 59), and Respondent not established an entitlement to an abatement for February or March 2015, based on her refusal to allow access for the repair from February forward [*Bellevue South Associates v Torres* 42 Misc3d 137(A)].

Petitioner is directed to correct the violation for the floors as required by law. Access is to be arranged by the parties. Respondent is not entitled to direct the manner in which the repair should be made, but may seek appropriate relief if, after giving Petitioner access and an opportunity to correct the violation, the violation is not corrected as required by law.

Based on the foregoing Respondent is entitled to an abatement of \$1337.50, and Petitioner is awarded a final judgment in the amount of \$12,929.22. Issuance of the warrant is stayed five days for payment.

This constitutes the decision and order of the Court.<sup>1</sup>

Dated: New York, New York  
March 4, 2015

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Sabrina B. Kraus, JHC

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<sup>1</sup> Parties may pick up Trial Exhibits within thirty days of the date of this decision from the second floor record room, Window 9, located at 111 Centre Street. After thirty days, the exhibits may be shredded in accordance with administrative directives.

